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No. 88-899

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

MICHAEL P. LANE, et al.,
Petitioners,

vs.

WILLIE WILLIAMS, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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Dated: December 28, 1988

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STATEMENT REQUIRED BY RULE 28.1

The full name of the party represented is Willie Williams, an inmate under the custody and control of the Illinois Department of Corrections, and the class consists of all inmates who have been assigned to the protective custody unit at the Stateville Correctional Center at any time since April 30, 1982. Neither Williams nor any class member is a corporation.

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The Petition for Writ of Certiorari seeks review of a decision of the Seventh Circuit Court of Appeals that affirmed the findings of fact, conclusions of law and final injunctive order of the district court acting as trier-of-fact in a prisoners' rights case against state prison administrators. Properly characterized, the decisions below present no issue worthy of Supreme Court review. The courts below applied the long-established "reasonable relationship" standard to the particular facts before them in concluding that petitioners' conduct unlawfully impinged respondents' constitutional rights. The decisions below thus depart from no legal precedent, threaten no prison official who can rationally justify restrictive actions and blaze no trails.

COUNTERSTATEMENT OF THE CASE

This case is a prisoners' class action for injunctive relief and damages under 42 U.S.C. § 1983 for violation of constitutional rights. (App. A-5) Respondents are a class of inmates assigned to protective custody at Stateville Correctional Center ("Stateville"), an Illinois maximum security prison. (App. A-5) Petitioners are administrators of Stateville sued in their individual capacities for acts taken under color of state law. (App. A-5)

Respondents brought this action to challenge petitioners' restriction of their constitutional rights to free exercise of religion, meaningful access to the courts, due process and equal protection by failing and refusing to provide respondents with programming and living conditions comparable to those provided to Stateville's general population inmates. (App. A-6) The merits of the complaint were tested in a ten-day bench trial that produced 18 witnesses, 1,970 pages of testimony, 86 documentary exhibits, and a comprehensive 82-page opinion by the trial judge. The opinion, which is published at 646 F. Supp. 1379 and reproduced in Appendix D to the Petition, contains 134 detailed findings of fact and extensive conclusions of law. It recounts the bases for the trial court's judgment that petitioners' conduct bore no reasonable relationship to legitimate penological interests and, hence, violated respondents' constitutional rights.

The panel of the Seventh Circuit Court of Appeals unanimously affirmed the trial court's decision in a studied 32-page opinion (including a two-page concurrence), which is published at 851 F.2d 867 and reproduced in Appendix D to the Petition. The panel "examined in detail" the "extensive record in this case" and concluded that the trial court had committed no clear error of fact and had correctly applied the law. (App. A-3) The panel affirmed because, "in contrast to *O'Lone* [*v. Estate of Shabazz*, 107 S. Ct. 2400 (1987)] and *Turner* [*v. Safley*, 107 S. Ct. 2254 (1987)], the [petitioners] failed to establish a record which revealed the manner in which security considerations were seri-

ously implicated by the unequal treatment afforded to protective custody status inmates." (App. A-5)

The panel also affirmed the trial court's denial of qualified immunity for petitioners, stressing that the trial court had relied on "landmark Supreme Court cases" that "clearly established that prison officials must demonstrate at a minimum a rational basis" for abridging prisoners' rights. (App. A-25) The panel affirmed the trial court's decision to appoint a special master because "the record here is replete with instances of administrative recalcitrance" and "non-compliance with the previous district court order was emphasized." (App. A-28)

The full Seventh Circuit denied petitioners' rehearing petition, with suggestion for rehearing *en banc*, with not one of the active circuit judges requesting a vote thereon. (App. B-2) The Seventh Circuit also denied petitioners' motion to stay the mandate, characterizing it as "another delaying tactic" which raised "meritless" issues. (Order of September 14, 1988)

With issuance of the mandate, the district court appointed Norval Morris, Professor of Law and Criminology and former Dean of the University of Chicago Law School, to serve as special master to oversee the development and implementation of a remedial plan. (Order of September 23, 1988) On December 20, 1988, Professor Morris submitted a proposed remedial plan which provides a blueprint for remedying the unconstitutional conditions within 3 months and at marginal expense. (Special Master's Proposed Remedial Plan of December 20, 1988)

REASONS FOR DENYING THE WRIT

1. The Courts Below Committed No Error of Fact or Law.

In *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985), this Court instructed that the scope of appellate review of trial court fact findings is limited:

> "If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals

> may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently."

The Court admonished that, "when findings are based on determinations regarding the credibility of witnesses, Rule 52(a) demands even greater deference to the trial court's findings." *Id.* at 575.

Review of this case is controlled by the teachings of *Anderson*, as the court of appeals acknowledged. (App. A-3 to -4) Here, the trial judge scrutinized petitioners' security explanations for their restriction of respondents' constitutional rights and found as fact that they were "exaggerated, at times arbitrary and in several instances wholly pretextual." (App. D-48 (FF 127)) The trial judge further found as fact that petitioners "did not approach the issue of protective custody conditions and programming in good faith or reasonably." (App. D-49 (FF 129)) These findings were based both on substantial record evidence and on the credibility and demeanor of the witnesses. (App. D-48 (FF 127-28))

The panel of the Seventh Circuit reviewed these and the trial court's other findings "on the entire record," *Anderson*, 470 U.S. at 573, and concluded that "[t]he district court quite properly refused to accept [petitioners'] testimony because it conflicted with the objective factual record." (App. A-5) The panel rejected as "unpersuasive arguments" (App. A-4) the same kind of selective rendition of the evidence that is offered in the Petition. (*Compare, e.g.*, App. A-7 (protective custody "neither 'voluntary' nor 'temporary'") *with* Petition at 10-11.)

The panel applied to the trial court's findings the well-settled legal standard, most recently articulated by this Court in *Turner v. Safley*, 107 S. Ct. at 2261, that restriction of inmates' constitutional rights is valid only "if it is reasonably related to

legitimate penological interests." (App. A-13) There is thus nothing to reconcile between the panel's decision and that in *Turner* and *O'Lone*, nor is there any conflict between the panel's decision and that in *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985), *cert. denied*, 107 S. Ct. 77 (1986), or *Taylor v. Rogers*, 781 F.2d 1047 (4th Cir. 1986), as claimed by the Petition. As the panel recognized (App. A-23), the results in these cases may differ, not because different legal standards were applied, but because different factual situations were found.

Finally, neither the panel nor the trial court held that the Constitution mandates "fully equal" programs and services for respondents, a contention that is the centerpiece of the Petition. They held simply and properly that petitioners' willful failure and refusal to provide respondents' comparable programming and housing conditions without a rational basis constituted unlawful abridgement of respondents' constitutional rights. The holdings below provide no basis for Supreme Court review.

2. The Courts Below Correctly Rejected Petitioners' Claim to Qualified Immunity.

Petitioners' failure to obtain qualified immunity was correctly premised by the courts below on the fact that their conduct was found to have lacked a reasonable relationship to legitimate penological interests. (App. A-25.) The Petition does not contest the fundamental fact that the case law at the time petitioners acted was crystal clear that prison officials must show a reasonable relationship to legitimate penological interests to justify restriction of inmate constitutional rights. There is no issue of qualified immunity in this case worthy of Supreme Court review.

3. Petitioners' Post-Trial Conduct Fully Justified Appointment of the Special Master.

The appointment of the special master in this case does not implicate the deference ordinarily due prison adminstrators, as

claimed in the Petition. It vindicates judicial authority to remedy unconstitutional conditions where prison administrators stubbornly resist. For nearly a year, petitioners met each of the district court's post-trial orders for good faith proposals for a remedial plan with the persistent theme that no remedy is feasible or possible. (App. A-12, -27 to -28; C-2) As the panel's concurrence explained, "[petitioners] and their counsel forced the district judge's hand." (App. A-32)

The argument that petitioners have not failed to comply "with an order of the district court to remedy any specific condition at Stateville" (Petition at 18) is particularly disingenuous. The argument seeks to preclude use of a special master to assist the district court in developing a specific remedial plan, on the ground that petitioners have yet to violate such a plan, the entry of which has been forestalled by petitioners' obdurate conduct.

CONCLUSION

In this case, the trial judge weighed the evidence and the credibility of the witnesses and concluded that petitioners' conduct bore no reasonable relationship to legitimate penological interests. The court of appeals affirmed because it found no clear error in the trial judge's findings and no legal error in the trial judge's conclusions. Both courts properly applied the controlling legal precedent to the particular facts before them. There is no issue worthy of review by this Court, and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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